

The below described is **SIGNED**.

Dated: December 10, 2009



JUDITH A. BOULDEN
U.S. Bankruptcy Judge



IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH
Central Division

In re
C.W. MINING COMPANY, dba Co-Op
Mining Company,
Debtor.

KENNETH A. RUSHTON, Chapter 7
Trustee,

Plaintiff,

vs.

C.O.P. COAL DEVELOPMENT
COMPANY, HIAWATHA COAL
COMPANY, INC., and ANR, INC., PAUL
KINGSTON, an individual, JOSEPH O
KINGSTON, an individual, and
CHARLES REYNOLDS, an individual,
MARK REYNOLDS, an individual, JOHN
DAVID KINGSTON, JR., an individual,
WORLD ENTERPRISES, STANDARD
INDUSTRIES, INC., FIDELITY
FUNDING COMPANY, SECURITY
FUNDING, INC., ABM, INC.,

Defendants.

Bankruptcy No. 08-20105 JAB
(Chapter 7)

**ORDER AND JUDGMENT ON
TRUSTEE'S OBJECTION TO C.O.P.
COAL DEVELOPMENT COMPANY'S
PROOF OF CLAIM NO. 9, PROOF OF
CURE CLAIM NO. 26 AND TRUSTEE'S
FIRST, THIRD AND FOURTH CLAIMS
FOR RELIEF AGAINST C.O.P. COAL
DEVELOPMENT COMPANY IN
ADVERSARY PROCEEDING #09-2248**

Adversary Proceeding No.
09-02248

[filed electronically]

The Court conducted a trial on October 26, 27 and 28, 2009, with respect to the Trustee's Objection (the "Objection") to C.O.P. Coal Development Company's ("COP") Cure Claim Under March 1997 Coal Operating Agreement (Claim No. 26), COP's Proof of Claim No. 9 and Claims for Relief 1, 3 and 4 in adversary proceeding #09-2248. Michael N. Zundel and James C. Swindler of the firm of Prince, Yeates and Geldzahler appeared on behalf of the Trustee. Kim R. Wilson and P. Matthew Cox of the firm of Snow Christensen & Martineau appeared on behalf of COP. The Court has thoroughly reviewed the pleadings, considered the evidence properly before it, assessed the credibility of the witnesses, considered the arguments of counsel, and conducted an independent review of applicable law and accordingly issued its Findings of Fact and Conclusions of Law [main docket #1000]. For the reasons stated in the Findings of Fact and Conclusions of Law, it is hereby ORDERED AND ADJUDGED as follows:

1. COP's Cure Claim Under March 1997 Coal Operating Agreement (Claim No. 26) is allowed in the amount of \$1,320,930.89 (subject to any setoff permitted by subsequent ruling of the Court). In all other respects, COP's Cure Claim is disallowed.

2. COP's claim based on Proof of Claim No. 9 is entirely duplicative of Claim No. 26 and is disallowed in its entirety if the Cure Claim is paid and/or satisfied by setoff. In the event the March 1997 Coal Operating Agreement is not ultimately assumed and the Cure Claim is therefore not satisfied, COP's Claim No. 9 is allowed in the

following two components: (a) as a general unsecured claim (subject to any setoff permitted by subsequent ruling of the Court) in the amount of \$833,906.28, and (b) as a priority unsecured claim in the amount of \$487,023.80 under 11 U.S.C. § 507(a)(3) (subject to any setoff permitted by subsequent ruling of the Court).

3. Judgment is granted on the First Claim for Relief consistent with the foregoing.

4. As a sanction for failing to provide discovery timely and in good faith the Court orders COP to pay all of the Trustee's attorney fees and expenses associated with the Objection, discovery and trial, including the First Claim for Relief, with the amount of attorney fees and expenses to be determined by separate order of the Court. COP shall not be permitted to offset the amount ordered to be paid hereunder against any claim COP may have against the estate.

5. Judgment is granted on the Third Claim for Relief pursuant to 11 U.S.C. § 548 avoiding any and all obligations incurred by the Debtor under the January 5 and 6, 2008 letter agreements between COP and the Debtor and the January 6, 2008 Coal Operating Agreement between COP and the Debtor. In addition, those three agreements are declared of no legal effect and avoided by reason of the fact that they were entered into in violation of the United States District Court's Supplemental Order in Aid of Enforcement of Judgment entered on December 19, 2007.

6. The Fourth Claim for relief is dismissed.

7. COP's motions for summary judgment designated as docket #836 and docket #837 in adversary proceeding #09-2248 are denied.

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Prepared and submitted by:

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Attorneys for Trustee Kenneth A. Rushton

CERTIFICATE OF SERVICE

I certify that on the 25th day of November, 2009, I caused to be served the foregoing via ECF to the following:

Kim R. Wilson
P. Matthew Cox
Snow, Christensen & Martineau
10 Exchange Place, Eleventh Floor
Salt Lake City, UT 84145

And via regular mail to the following:

F. Mark Hansen
F. Mark Hansen, P.C.
431 North 1300 West
Salt Lake City, UT 84116

/s/ James C. Swindler

CLERK'S CERTIFICATE

The undersigned certifies that a copy of the foregoing Order was served on the following persons by mail on the ____ day of _____, 2009, addressed as follows:

Michael N. Zundel
James C. Swindler
175 East 400 South, Suite 900
Salt Lake City, UT 84111

F. Mark Hansen
F. Mark Hansen, P.C.
431 North 1300 West
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